

Complex Civil Litigation

In 1996, following an exhaustive national and statewide review of the merits of a specialized court for business and commercial disputes, a Judicial Council task force recommended against creation of such a court. A year later, Chief Justice Ronald M. George appointed a 28-member Complex Civil Litigation Task Force to find ways of helping courts manage complex civil litigation more efficiently and effectively. The Judicial Council received \$1.2 million in half-year funding for a complex litigation pilot program that will provide special training for judges, research staff, and technology.

BACKGROUND

Business Court Task Force

For decades state and federal judges around the country have managed complex litigation, a field that has been the subject of intense scrutiny and evaluation.

In 1996, the Business Court Study Task Force appointed by then Chief Justice Malcolm M. Lucas conducted an exhaustive national and statewide review and solicited opinions from business leaders, judges, and attorneys on the desirability of creating specialized court programs. The task force recommended *against* implementing a specialized court for business cases. Instead the Task Force recommended the establishment of specialized complex litigation court departments.

Why not a separate business court?

The advantages of a complex litigation

department over a separate business court were identified by the task force as:

- *Responsiveness to the public.* Business courts handle only business disputes; complex litigation departments handle a broader range of the public's disputes, including business disputes, complex tort claims (such as mass torts), and other disputes involving complicated legal and factual issues.
- *Public perception.* Business courts are viewed by many as assisting only the business community; complex litigation departments handle complex cases affecting all aspects of society.
- *Service to the public.* Once business courts are established with separate jurisdiction by statute, those courts can only be used for a limited number of cases. Complex litigation departments, as part of the broader trial court system in a county, can expand or contract to respond to periodic fluctuations in caseloads, including emergencies.
- *Equal expertise and resources.* Complex litigation departments would have the same expertise (through training and development of a complex litigation manual), resources (human and technological), and streamlined procedures through statutory rule amendments) as do business courts.

COMPLEX CIVIL LITIGATION TASK FORCE

The Complex Civil Litigation Task Force had six subcommittees, established in 1997, consisting of

(1) Pretrial, (2) Trial, (3) Specialized Areas (antitrust, construction defect, environmental, insurance, intellectual property, mass torts, securities, and class actions), (4) ADR, (5) Technology (including electronic filing and service), and (6) Education (teaching curriculum).

The task force was given the following projects:

- **Deskbook.** Develop a manual to enable state court judges to identify and handle complex cases more efficiently and equitably.
- **Education.** With the Judicial Council Center for Judicial Education and Research (CJER), develop a specialized curriculum and programs devoted to complex civil case management and substantive law in areas that frequently arise in complex cases, including business and commercial disputes, and make recommendations as to who should attend and how often those designated should attend the programs.
- **Legislation.** Recommend appropriate amendments to statutes and California Rules of Court to permit flexible management of complex civil cases, including business and commercial disputes.
- **Rules of Court.** Adopt a definition of a complex civil case and prepare guidelines for identifying a complex civil case.
- **Pilot Program.** Establish a pilot program in six counties that is responsive to users of the court system and that focuses resources in a complex litigation division; the task force will evaluate the results of the pilot program for replication in other courts.
- **Oversight Body.** Recommend to the Judicial Council an appropriate oversight body charged

with the ongoing responsibility for (a) monitoring complex litigation programs established in the courts and (b) recommending improvements to such programs.

Approved recommendations

In October 1999, the Judicial Council approved the following actions:

- Distribution of the *Deskbook on the Management of Complex Civil Litigation* to all judges upon publication by Matthew Bender;
- Forwarding of the special judicial education curriculum, *Complex Civil Case Management*, with suggested policies for faculty, attendees, and course prerequisites to the Board of Governors of the Center for Judicial Education and Research (CJER);
- Referral to the CJER Board of Governors proposed amendments to sections 25.2 and 25.3 of the Standards of Judicial Administration;
- Adoption of new California Rules of Court, effective January 1, 2000, including one that defines a complex case as one requiring “exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel”; and revisions to relevant rules, as well as seeking of conforming legislation;
- Charging the Civil and Small Claims Advisory Committee with ongoing responsibility for making recommendations for improvements to complex civil litigation programs in California and for updating the *Deskbook on the Management of Complex Civil Litigation*.

PILOT PROGRAM

Six California trial courts embarked on a pilot program designed to give judges training and resources to help them manage complex civil cases with greater effectiveness and efficiency. The program has the support of Governor Gray Davis and is likely to serve as a model for the rest of the nation.

The Superior Courts of the Counties of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara are part of the new Complex Civil Litigation Pilot Program created and funded by the 1999 Budget Act.

The California courts, comprising the largest state judicial system in the nation, report more than 9 million filings a year, not including traffic cases. Complex litigation refers to cases that require exceptional management to avoid placing unnecessary burdens on the court or the litigants and include such areas as antitrust, securities claims, mass torts, and class actions.

The pilot program will evaluate the impact of three interrelated resources provided for courtrooms specialized in handling complex civil litigation:

- (1) funds for augmenting the personnel and technological resources dedicated to complex civil cases;
- (2) specialized educational support; and
- (3) the guidance and insights provided by the new *Deskbook on the Management of Complex Civil Litigation*.

Grants

Funds for the pilot programs are made available from the Judicial Administration, Efficiency and Modernization Fund (the Mod Fund) and the Trial Court Improvement Fund.

Grant amounts vary by county, reflecting both the differences in the number of courtrooms the courts are designating for the program as well as varying start dates for the program. These grant checks are the first of what are expected to be five semiannual payments.

Alameda and Contra Costa will receive initial grants of \$150,200 and reflect the fact that their one-department programs began February 1, 2000. Los Angeles received a grant of \$375,000 for the six courtrooms that began their participation in the program on January 24, 2000. Los Angeles also receives a one-time technology grant of \$150,000 that will be used on technology enhancements in one or more of the six departments designated for the program. Los Angeles is eligible for this grant because of its recent vote to unify.

Orange County's court has received a check for \$350,800 reflecting its four-department program that began January 3, 2000. Last, both San Francisco and Santa Clara County courts received \$175,400 for programs that began in January.

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